

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

LISA ROBERTS et al.,

Plaintiffs,

v.

MARK CARTON,

Defendant.

No. CV 08-1071-AC

OPINION AND ORDER

**MOSMAN, J.,**

On December 8, 2008, Magistrate Judge Acosta issued Findings and Recommendation ("F&R") (#45) in the above-captioned case recommending that defendant's Motion to Dismiss (#5) be GRANTED IN PART and DENIED IN PART without prejudice. Specifically, Judge Acosta recommends the defendant's (1) Motion to Dismiss for Failure to State a Claim be DENIED as to Claims 1 and 2 and GRANTED as to Claim 3; (2) Motion to Dismiss Because Claims Barred by Laches be DENIED; (3) Motion to Dismiss Because Claims Barred by Judicial Estoppel be DENIED; (4) Motion for Judgment on the Pleadings be DENIED; and (5) Motion to Dismiss for Failure to Join Necessary Parties be DENIED. Judge Acosta also recommends that defendant's Amended Motion to Require Plaintiffs to Post Undertaking (#30) be DENIED with prejudice, and plaintiffs' Amended Motion for Leave to File Amended Complaint (#28) be GRANTED. Defendant filed objections to the F&R (#48).

## DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any of the magistrate judge's F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Acosta's recommendation, and I ADOPT the F&R (#45) as my own opinion.

IT IS SO ORDERED.

DATED this 2nd day of February, 2009.

/s/ Michael W. Mosman  
MICHAEL W. MOSMAN  
United States District Court